

15,000, or imprisonment of one to six months, or both. The cost of publicity is paid by the losing party, or by the association when its intervention was partially successful.

## Latin America\*

### I. Argentina

President Alfonsín's early replacement by President Menem has been accompanied by a series of far-reaching legislative and regulatory changes.

#### A. EXCHANGE CONTROLS

Effective May 30, 1989, the Central Bank reunified exchange rates by establishing a "Sole Exchange Market," and reinstituted exchange controls. The Bonex mechanism remains as an overlay on the now rather restrictive exchange control regulations.

#### B. ADMINISTRATIVE REFORM LAW

An Administrative Reform Law (*Reforma del Estado*) went into effect on August 23, 1989. It contains a number of important features, summarized in the remainder of this section.

##### 1. Privatization

Many businesses, now owned wholly or partially by the Government, are to be privatized. The law itself identifies dozens of businesses that may be privatized, including the national telephone, airline, mining, mail, and telegraph companies, the national railway system, a number of television channels and radio stations, and the Buenos Aires subway system. Other businesses may be declared to be "subject to privatization" by the Government.

##### 2. Public Contracting

The law allows governmental authorities, for a period of 180 days (which may be extended to 360 days), to permit public sector businesses to contract without complying with bidding requirements. They may also declare rescission of

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\*Contributions by Jorge Cubas, Sebastião Mattos, Miguel Moyola, Paul Slocomb, and Tom Studwell, all of Baker & McKenzie, Chicago.

contracts entered into by public sector businesses prior to the enactment of the law, based on a theory that a current national "emergency" in Argentina constitutes an event of *force majeure*.

### 3. *Legal Proceedings against Public Entities*

Prosecution of suits and execution on monetary judgments and arbitral awards against public sector businesses are suspended for two years. There are exceptions for certain items, including labor obligations, tax obligations, obligations to pay damages for personal injury, and the commercial obligations of banks.

### 4. *Foreign Investment in Broadcasting*

Foreign investors are allowed to own up to 25 percent of the equity of an Argentine broadcasting company.

## C. ECONOMIC EMERGENCY LAW

As of the date of writing of this summary (early September 1989), an Economic Emergency Law has been passed by the Argentine Congress, and is awaiting President Menem's signature. The provisions of this law also are far-reaching. The principal changes will suspend all subsidies and many manufacturing and mining incentives, prohibit the Central Bank from financing government deficits, eliminate all prior government approval requirements for foreign investments, and suspend the "Buy Argentine" law.

## D. TAX REFORM

In addition to the Administrative Reform Law (already passed and signed) and the Economic Emergency Law (awaiting the President's signature), a tax reform package is under consideration. It is expected to be presented to the Argentine Congress during October 1989. A significant change expected is the elimination of many goods, transactions, and services from lists of items that are now exempt from value added tax (VAT), with all goods and services to be subject to VAT at a slightly reduced rate of 14 percent. Also contemplated are income tax simplification and elimination of a number of other taxes.

## II. Brazil

### A. CURRENCY EXCHANGE

On July 3, 1989, the Brazilian Federal Reserve Board (*Conselho Monetário Nacional*) and the Brazilian exchange control and monetary authority (*Banco Central*, the Central Bank) issued regulations "centralizing" at the Central Bank most hard currency remittances out of Brazil. This measure affects dividend, royalty, and interest remittances, as well as remittances for certain imports.

Under the new rules, a Brazilian resident person or entity that seeks to convert new cruzados dividends or royalties into U.S. dollars and remit the U.S. dollars to the United States must now submit an application to the Central Bank for the remittance. The Central Bank reviews each application and, hence, delays for the remittances can be expected. These delays have averaged sixty calendar days from the date the application is filed.

In the past (as recently as February 1989), the Central Bank implemented similar "centralization" measures aimed at controlling the flow of hard currency out of Brazil. All these "centralization" measures have been temporary and did not remain in effect for more than a couple of months.

The putative reason the Brazilian authorities have resorted to "centralizing" currency outflow is to protect Brazil's hard currency reserves. Past experience suggests that, as soon as Brazil's reserves reach a level considered "acceptable" by the local authorities, the "centralization" measure will be lifted. In this respect, Brazilian trade figures continue to be very positive, and sources within the Central Bank indicate that the reserves have already risen to "acceptable" levels. These same sources also indicate that the current restrictions should be lifted "soon."

#### B. TRADE LIBERALIZATION

Over the past few months, the Brazilian Foreign Trade Bureau (*Carteira de Comércio Exterior*; CACEX) and the Brazilian Treasury (*Ministério da Fazenda*) have significantly reduced import duties applicable on the importation of a substantial quantity of machinery and equipment, accessories, and other items. This reduction has been implemented as part of Brazil's 1988 Trade Liberalization and Industrial Development Plan, which calls for, inter alia, renewal of Brazil's industrial parks and modernization of its banking, financial, and services sectors.

The taxes being reduced are the import tax (*imposto de importação*) and the excise tax (*imposto sobre produtos industrializados*). Both taxes are federal ad valorem taxes, whose rates vary depending on the Brazilian Customs Nomenclature (TAB) classification for the specific import. (TAB is based on the Brussels Nomenclature.)

In early 1988, effective import duty rates applicable to machinery and equipment were at an 80 to 90 percent level. These have generally been reduced to 30 to 35 percent.

#### C. LOCAL TRADE ZONES

Over the past few years Brazil has implemented several regional trade liberalization and economic integration treaties with its South American neighbors. The most publicized is the Argentine-Brazilian Common Market Treaty of 1985 (*Declaração de Iguazu*).

Under the Treaty, Argentina and Brazil substantially expanded their mutual trade to U.S. \$1.8 billion in 1988. Although Brazil has had a substantial positive trade balance under the Treaty, both countries have taken steps to attempt to balance their mutual trade accounts.

Since 1985, the following have been the main sectorial trade and integration implementation agreements executed: capital goods; wheat; food industry; commerce; binational enterprises; financial industry; investment funds; energy; biotechnology; airplane industry; steel industry; land and maritime transportation; nuclear industry; automotive industry; and social and economic planning.

#### D. COMPUTER INDUSTRY

The head of Brazil's Informatics Agency (*Secretaria Especial de Informatica*; SEI) has recently been replaced. The new Informatics Secretary is Mr. K. C. Weber. Mr. Weber is said to favor an opening of the Brazilian desktop computer market reserve and facilitating the flow of software into and within Brazil.

### III. Colombia

While most recent international attention on Colombia has focused on the internal turmoil resulting from the drug war, there have been a number of important legislative and regulatory developments.

#### A. TAX

Late in 1988, a number of important tax changes were introduced, including, *inter alia*, the following:

- (1) a reduction to 2 percent in the rates of both income tax and remittance tax on rentals paid abroad for equipment used by Colombian construction contractors in projects awarded pursuant to international bidding;
- (2) progressive reductions in the income tax withholding rate on dividends paid by a Colombian company to a Colombian branch of a foreign company;
- (3) an obligatory integral inflation adjustment procedure, to be instituted effective with the 1992 tax year; and
- (4) adjustments of the percentages and bases for calculation of presumed income.

In June, by Decree 1321 of 1989, the Government laid the groundwork for complete elimination of the patrimony tax (which applies to individuals, but not companies). The demise of this tax is timed to coincide with the advent of the inflation adjustment procedure noted in item (3) above. The net effect, in theory at least, will be no patrimony tax, but an increase in income tax revenues of the Government that will more than offset the patrimony tax forgone.

Finally, in August (for companies) and in September (for individuals), Colombian taxpayers were required to invest in special financing bonds, in an amount equal to 3 percent of tax liability. The bonds are denominated in Colombian currency, mature in five years, are "payable" at that time at 130 percent of nominal value (but can be used only for the payment of national taxes), are freely tradeable on the stock exchange, and are exempt from tax.

#### B. CREDITORS' ARRANGEMENTS

By Decree 350 of 1989, the Government promulgated a new set of procedures regarding *concordato preventivo* (a kind of chapter 11 arrangement with creditors), effective from May 1, 1989.

#### C. FOREIGN LOANS

By Resolution 32 of April 30, 1989, the Monetary Board modified the rules regarding foreign loans. Under the Resolution, in order to be registered with the Exchange Office of the Bank of the Republic, a foreign loan must be from a financial entity (intercompany loans are out, unless they are bank-fronted), and the borrower must invest the funds in productive fixed assets (working capital loans are out).

#### D. SOFTWARE

By Decree 1360 of June 23, 1989, the Government expressly stated that software is to be considered a creation in the literary domain. The effect is to confirm that software is copyrightable in Colombia, thus ratifying an existing practice of the copyright authorities.

#### E. IMPORTS

By Resolution 004 of June 29, 1989, Incomex (Colombia's import-export authority) issued new rules regarding requests for import licenses. One item of particular interest is that Incomex may now ask importers to supply price lists not only of foreign manufacturers, but also of foreign distributors and suppliers.

### IV. Mexico

Recent events provide further evidence of the Mexican Government's avowed intent to aggressively promote foreign investment in Mexico.

On May 16, 1989, the Mexican Government published new Foreign Investment Regulations (the Regulations) in the *Diario Oficial*. Without amending the Foreign Investment Law (FIL), the Regulations radically liberalized foreign investment and streamlined or eliminated previously required government approvals. The Regulations revoked all prior foreign investment resolutions and

amended, restated, reorganized, and consolidated the prior rules in a single document. Under the Regulations, foreign investors may now own 100 percent of the equity of a newly formed Mexican company without prior government approval, provided all of the following conditions are satisfied:

- (1) the investment in fixed assets does not exceed U.S. \$100 million;
- (2) the investment is funded from a non-Mexican source and the paid-in capital equals at least 20 percent of the total investment in fixed assets;
- (3) the company's industrial sites are not located in areas of high industrial concentration (e.g., Mexico City, Guadalajara, and Monterrey);
- (4) the company maintains a neutral or positive foreign currency balance during the first three years of operation;
- (5) the company creates permanent jobs and establishes training and development programs for employees;
- (6) the company uses adequate technologies to satisfy environmental requirements; and
- (7) the company is not engaged in activities subject to special restrictions (e.g., agriculture, forestry, and fishing).

The Regulations also create a three-year window during which foreign investors may acquire all of the shares of an existing Mexican company without government approval, provided the proposed investment satisfies conditions similar to those stated above.

The Regulations also eased restrictions on foreign investments in activities that were heavily regulated in the past. For example, the Government may now authorize foreign investors to purchase, through temporary trust arrangements, an unlimited percentage of beneficial rights to shares of companies engaged in activities such as air and maritime transportation, gas distribution, and the production of secondary petrochemicals. The Government's approval will depend, *inter alia*, on whether the companies in question are experiencing severe financial difficulties, and whether they will be exporting the majority of their production. The trust arrangements will have a limited duration of twenty years, and the trust's technical committee will have to include a government officer as a voting member.

The Mexican Government has also liberalized foreign investment in less obvious ways. By publishing a narrow list of petrochemicals classified as primary and secondary,<sup>1</sup> the Government liberalized foreign investment in the petrochemical industry. If foreign investors propose to engage in the production of petrochemicals that are not included in the list, and if their investment satisfies the conditions set forth in the Regulations, they may form a wholly owned Mexican subsidiary to engage in that activity.

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1. Primary petrochemicals can only be produced by governmental entities; secondary petrochemicals can only be produced by Mexican companies with foreign equity participation not greater than 40 percent. The list of petrochemicals was published in the *Diario Oficial* on August 15, 1989.

## V. Venezuela

### A. EXCHANGE CONTROLS AND FOREIGN INVESTMENT

By Decrees Nos. 76 and 77 and Exchange Agreement No. 1 of March 13, 1989, the Venezuelan Government dismantled the multitiered exchange rate system in effect since February 1983. Effective March 14, 1989, a single, freely floating exchange rate exists for the Venezuelan bolivar. The exchange rate unification was accompanied by the elimination of the entire administrative superstructure and body of regulations governing the availability of preferential dollars for importing goods, paying foreign debt, and making capital remittances. Also eliminated was the requirement that private sector exporters sell their foreign currency export proceeds to the Central Bank. All capital transactions, including inward capital transfers, capital repatriations, and remittances of profits, interest, and royalties are now to be effected at the unified free market rate. The free rate must also be used in most cases for the payment of principal and interest on the public sector and private sector foreign debt.

Contemporaneously with the exchange rate unification, Venezuela amended its debt-equity conversion program (Decree No. 86 of March 15, 1989). The principal changes were:

- (1) the opening of the program to investments by mutual funds and investments in publicly traded securities;
- (2) the option for the Government to adopt an auction system for establishing the discount for conversion of the public debt; and
- (3) the fixing of the actual cash proceeds of each operation, rather than the face value of the converted debt, as the amount to be registered with SIEX as registered foreign investment.

### B. NEW TRADE POLICY

By Decree No. 239 published on May 30, 1989, Venezuela's new President Carlos Andres Perez issued his new administration's Rules for the Trade Policy of Venezuela. The Rules, to be implemented over the three years following the enactment of Decree No. 239, constitute an ambitious program of tariff reduction and elimination of nontariff restrictions on imports. The new Rules, which require the issuance of further implementing decrees to become effective, introduced the following major reforms:

- (1) in 1989, the elimination of specific import duties on industrial imports, and their replacement with generally applicable ad valorem tariffs of 80 percent on consumer goods, and 50 percent on intermediate goods, capital goods, and raw materials;
- (2) in 1990, the reduction of the maximum tariff on industrial imports of all kinds to 50 percent ad valorem, complemented by four lower tariff rates depending on the grade of completion of the imported goods;